

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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In the Matter of the Application of Southern
California Edison Company (U 388 E) for
Approval of Economic Development Rates.

Application 04-04-008
(Filed April 5, 2004)

Application of PACIFIC GAS AND
ELECTRIC COMPANY to Modify the
Experimental Economic Development Rate
(Schedule ED).

Application 04-06-018
(Filed June 14, 2004)

(U 39 E)

Application of SOUTHERN CALIFORNIA
GAS COMPANY (U 904 G) for Approval of
a Long-Term Gas Transportation Agreement
with Guardian Industries Corp.

Application 05-10-010
(Filed October 7, 2005)

(Discount Issues)

**COMMENTS OF MERCED IRRIGATION DISTRICT
AND MODESTO IRRIGATION DISTRICT IN RESPONSE TO
RULING OF ADMINISTRATIVE LAW JUDGE ROBERT BARNETT
REGARDING ORDER GRANTING LIMITED REHEARING OF
DECISION (D.) 05-09-018 REGARDING THE FLOOR PRICE FOR EDR**

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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

In the Matter of the Application of Southern California Edison Company for Approval of Economic Development Rates (U 388 E)	Application 04-04-008 (Filed April 5, 2004)
Application of PACIFIC GAS AND ELECTRIC COMPANY to Modify the Experimental Economic Development Rate (Schedule ED) (U 39 E)	Application 04-06-018 (Filed June 14, 2004)
Application of SOUTHERN CALIFORNIA GAS COMPANY (U 904 G) for Approval of a Long-Term Gas Transportation Agreement with Guardian Industries Corp.	Application 05-10-010 (Filed October 7, 2005) (Discount Issues)

**COMMENTS OF MERCED IRRIGATION DISTRICT
AND MODESTO IRRIGATION DISTRICT IN RESPONSE TO
RULING OF ADMINISTRATIVE LAW JUDGE ROBERT BARNETT
REGARDING ORDER GRANTING LIMITED REHEARING OF
DECISION (D.) 05-09-018 REGARDING THE FLOOR PRICE FOR EDR**

Pursuant to the Administrative Law Judge Robert Barnett’s Ruling Regarding Order Granting Limited Rehearing of Decision (D.) 05-09-018 Regarding the Floor Price for EDR filed June 22, 2006 (“Ruling”) and the Administrative Law Judge’s Ruling Consolidating Discount Issues for Decision and Establishing New Service List for Filing Reply Comment and Other Documents Concerning Discount Issues filed July 25, 2006, Merced Irrigation District (“Merced ID”) and Modesto Irrigation District (“Modesto ID”) (collectively “the Districts”) file these Comments.

The Ruling sets forth five issues and states that parties “may file comments and propose solutions to address the exclusion of nonbypassable charges from the utilities’ Joint Proposal floor price as discussed herein, associated statutory and cost shifting issues, and whether other options exist for effectuating an economic development rate program pursuant to Pub. Util. Code

§ 740.4.”¹ The Districts respond to some but not all issues raised in the Ruling, reserving the right to reply to comments of any party regarding any of the issues raised in the Ruling.

1. ***Is it necessary to exclude some or all nonbypassable charges from the floor price in order to provide the level of EDR discount adopted in D.05-09-018? Answers should provide supporting facts and explanation.***

The Districts do not respond to this issue at this time.

2. ***Can the Commission discount any nonbypassable charges? Which ones?***

A nonbypassable charge is one that cannot be avoided. It would therefore seem unlikely that the Commission can allow a charge that is not to be avoidable to be discounted. This is not to say that the Legislature is powerless to allow *exemptions* from nonbypassable charges; that issue is discussed under Issue 3 below. Most of the nonbypassable charges in issue with respect to ED customers are legislatively established² and either discounts or exemptions would be permitted insofar as and in the fashion that the legislation allows.

3. ***For each individual nonbypassable charge, address whether exemptions or exceptions for EDR customers are permissible under the applicable statutes and Commission decisions.***

Exemptions (as opposed to discounts) are allowed to some but not all nonbypassable charges, and for the most part those exemptions that exist are in statute.³

CTC was intended to be nonbypassable, while at the same time certain exemptions were built into the statute. The last sentence of the introductory paragraph to Section 367 states: “These uneconomic costs shall include transition costs as defined in subdivision (f) of Section 840, and *shall be recovered from all customers or in the case of fixed transition amounts, from the customers specified in subdivision (a) of Section 841, on a nonbypassable basis. . .*”. (Italics added.) The Legislature did allow for certain exemptions to CTC when it passed AB 1890: cogeneration (Section 372); irrigation districts (Section 374); “new customer load or incremental

¹ Ruling, Ord. ¶ 1.

² The Ongoing CTC (§ 367); nuclear decommissioning (§ 379); DWR charges (§ 366.2(d)(1)); Fixed Transition Amount charges (§§ 367, 840(d)); and various public purpose program charges (§§ 381(a) and 382 (low income assistance) and 399.8(c)(1)(energy efficiency, renewable energy, and research, development and demonstration programs)). Commission-created nonbypassable charges include PG&E’s ECRA, Edison’s HPC, and charges for new utility generation costs from D.04-12-048 and the recent so-called “cost allocation” decision, D.06-07-029 (neither of which has yet been given an acronym).

³ The Districts use the term “exemption” to apply to customers who are not required to pay a nonbypassable charge they might otherwise be required to pay. This differs from customers who are not required to pay such a charge because it simply does not apply to them, such as transferred municipal departing load customers who do not pay DWR cost responsibility surcharges because they left an IOU for a POU before DWR began procuring power in early 2001.

load of an existing customer where the load is being met through a direct transaction and the transaction does not otherwise require the use of transmission or distribution facilities owned by the utility” (Section 369); and service taken under FERC tariffs, contracts, or rate schedules (Section 369). Some of these exemptions have expired (e.g., Section 374), others have not (e.g., Section 369), and some exist only with reference to Sections 367, 368, 375, and 376.

The Districts are not aware that the Commission has addressed the question of exemptions to PG&E’s ECRA or Edison’s HPC.

Finally, the Commission has interpreted Public Utilities Code Section 366.2(d)(1) to allow exemption to payment of DWR CRS charges in the absence of cost shifting. See discussion under Issue 4 below.

4. *What nonbypassable charges are subject to exception upon a Commission finding that there will be no cost shifting?*

The Commission has found that certain municipal departing load is exempt from paying the DWR power charge, but not the DWR bond charge or CTC. The power charge exemption is based upon the Commission’s conclusion after evidentiary hearings that, where such exemption is allowed, no cost shifting and thus no offense to Section 366.2(d) will occur.⁴

However, Section 366.2 applies to DWR power purchase costs. The concern behind that statute is that during a state energy crisis, DWR expended state funds to keep the lights on, and customers whose light were kept on because of those purchases should not escape responsibility for them. That concern does not animate other non-DWR nonbypassable charges.

a. *Parties advocating exception from the payment of such nonbypassable charges must submit a showing to demonstrate why cost shifting would not occur (e.g., does customer retention in fact produce benefits that would offset any shifting of costs to other customer classes?)*

The Districts believe that under the circumstances in issue here (as distinct from circumstances applicable to POUs such as the Districts),⁵ cost shifting would occur. The Districts therefore do not respond to this subissue at this time.

⁴ See, e.g., D.04-11-014, *mimeo*, pp. 9-13, 40; D.04-12-059, *mimeo*, pp. 14-16, 25.

⁵ The Districts continue to maintain that departure of customers to POUs are forecastable, that indeed history shows that to be true, that under SB 1723 POUs and IOUs are now required to plan for such departures, and as a result with proper procurement practices departures to POUs will not result in costs being shifted to remaining IOU customers.

b. Do any of the benefits of retaining EDR customers accrue to shareholders? If so, how should this be considered when determining cost-shifting?

The undisputed evidence before the Commission in this proceeding proved that benefits of retaining EDR customers accrued to utility shareholders.⁶ PG&E witness Mr. Kataoka admitted on cross-examination that revenue collected from customers on ED rates helps PG&E achieve its rate of return, that customers on such rates have historically remained PG&E customers after the discount ends, and that once the discount ends, the customer contributes fully to PG&E's realization of its rate of return.⁷ PG&E also admits and in fact counts on the customer remaining a PG&E customer after the ED rate contract expires.⁸ It is difficult to see how any utility could deny that revenue useful in recovering its authorized rate of return is not a shareholder benefit.

These ED rates are not the only PG&E program that raise the question: If shareholders do not benefit, why is PG&E offering a program funded by shareholders? For example, PG&E maintains a shareholder-funded economic development grant program.⁹ The common sense answer is that shareholders *do* benefit, and that is why the programs are offered. Even if the benefit cannot be directly quantifiable in dollars, PG&E shareholders benefit from the good publicity generated by such a program (else, why the press release?)

The second question stated in this subissue is in essence what relevance shareholder benefit has to cost-shifting. The Districts suggest that in the presence of cost-shifting (which will occur since in the zero-sum game that is utility cost recovery, when one customer gets a discount some other customer has to make up the difference), shareholder benefit allows the Commission to think and act outside the box. If costs are shifted to other *customers* who must pay for the ED customer's discount, is there a way to ameliorate the cost shift?

The answer is yes. Since shareholders benefit from customer retention spurred by the ED rate, it is only fair for shareholders to bear some of the burden. They can do that by either complete or partial funding of the cost shift – that is, by either complete or partial funding of the discount.

⁶ Despite significant evidence and briefing, as well as specific discussion of the issue of shareholder benefit and contribution in the ALJ's Proposed Decision, the Commissioner Alternate that became Decision No. 05-09-018 contains no analysis of the issue of shareholder benefit.

⁷ 2 Tr. 266:20-22, 266:27-267:17 (PG&E/Kataoka).

⁸ Ex. 7, p. 6-2 (PG&E/Kataoka).

⁹ See PG&E press release at the following internet address:
http://www.pge.com/news/news_releases/q2_2006/060613.html

5. ***Can EDR program levels under D.05-09-018 be achieved by applying the discount to bill components other than nonbypassable charges? Are there any statutory restrictions to applying the EDR discount to the other bill components?***
- a. ***What would be the resulting allocation of program costs?***
- b. ***Would applying the discount to the other bill components (e.g., distribution and transmission) result in zero or negative margin to those charges? If so, by how much (expressed as a percentage)? How should this shortfall be allocated among the remaining customer classes?***
- c. ***What benefits accrue to remaining customers that offset any shortfalls?***

The Districts do not respond to these issues at this time.

In conclusion, the Districts appreciate the opportunity to provide this response to the Ruling and look forward to participating in the remainder of the rehearing phase of this proceeding.

Dated: August 1, 2006

Respectfully Submitted,
DOWNEY BRAND LLP

By: /s/ Dan L. Carroll
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CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the **COMMENTS OF MERCED IRRIGATION DISTRICT AND MODESTO IRRIGATION DISTRICT IN RESPONSE TO RULING OF ADMINISTRATIVE LAW JUDGE ROBERT BARNETT REGARDING ORDER GRANTING LIMITED REHEARING OF DECISION (D.) 05-09-018 REGARDING THE FLOOR PRICE FOR EDR** on August 1, 2006, on all known parties to proceeding A. 04-04-008, A. 04-06-018, A05-10-010 and R. 02-01-011 via electronic mail to those whose addresses are available and via U.S. mail to those who do not have an electronic address..

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated this 1st day of August, 2006, at Sacramento, California.

/s/ Colleen Bullock

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